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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/537,272

10/20/2005

Johann Baumgartner

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EXAMINER

NGUYEN, VU Q

ART UNIT

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3657

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/537,272	<b>Applicant(s)</b> BAUMGARTNER, JOHANN	
	<b>Examiner</b> VU Q. NGUYEN	<b>Art Unit</b> 3657	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 20-39 is/are pending in the application.
- 4a) Of the above claim(s) 20-28 and 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>06/01/2005</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Election/Restrictions*

Applicant's election without traverse of Group II (claims 29-38) in the reply filed on 05/04/2009 is acknowledged.

Claims 20-28 and 39 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 05/04/2009.

### *Claim Objections*

Claims 30-34 and 37-38 are objected to because of the following informalities:

In claim 30, lines 1-2, "the parking brake function" should be --the parking and/or emergency brake function--.

In claim 31, line 4, "the vehicle" should be --a vehicle--.

In claim 34, line 2, "the electromotive adjusting device" should be --the electromotive wear adjusting device--.

In claim 34, last line, "the vehicle" should be --a vehicle--.

In claim 37, line 2, "the brake disc" should be --a brake disc--.

In claim 38, line 2, "the disc" should be --a brake disc--.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 30-36 and 38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 30 recites the limitation “when the parking brake function is implemented, a pressure in a service brake cylinder for the disc brake is at least temporarily reduced.” It is unclear exactly why and/or how this occurs. Is service brake pressure also used to implement the parking and/or emergency brake function in addition to use of the electromotive wear adjusting device? If so, how? Questions such as these render it unclear as to exactly how the parking and/or emergency brake function is implemented.

Claim 31 recites the limitation “determining a pressure of service brake cylinders required for temporarily stopping the vehicle.” For reasons similar to those set forth above, it is unclear exactly why and/or how service brake pressure is determined in relation to the parking and/or emergency brake function.

Claim 34 recites the limitation “a brake cylinder pressure is reduced only at individual wheels, and further wherein after engaging the parking brake at said wheels, the brake cylinder pressure is raised again such that the parking brake is engaged successively at different axles or wheels of the vehicle.” For reasons similar to those set forth above, it is unclear exactly why and/or how the brake cylinder pressure is used in relation to the parking and/or emergency brake function.

Claim 34 recites the limitation “the parking brake” in lines 4 and 5. There is insufficient antecedent basis for this limitation in the claim. The recitation of a “parking brake” also implies additional structure that would render the claim indefinite as to exactly what structure comprises the parking brake.

Claim 35 recites the limitation “said adjusting path being dimensioned such that a defined spreading-open of the caliper is adjusted corresponding to a tension force of the caliper necessary to achieve the defined desired-value.” It is unclear exactly what is meant by this recitation, and thus, what the limitation imparts. What exactly is a tension force of the caliper?

Claim 35 recites the limitation “the caliper” in the second to last line. There is insufficient antecedent basis for this limitation in the claim.

Claim 36 recites the limitation “a desired-value definition is obtained from a signal of a pressure sensor for controlling the parking and/or emergency brake function in the case of vehicles equipped only on one axle with an integrated electromotive parking and/or emergency brake and with conventional spring brakes on a driving axle, which pressure sensor detects the pressure acting upon the spring brakes.” It is unclear why and/or how the pressure acting upon the spring brakes is used to control the parking and/or emergency brake function. Furthermore, is there any additional structure imparted by the recitation of “an integrated electromotive parking and/or emergency brake”?

Claim 38 recites the limitation “the parking and/or emergency brake” in lines 3-4. There is insufficient antecedent basis for this limitation in the claim. The recitation of a

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“parking and/or emergency brake” also implies additional structure that would render the claim indefinite as to exactly what structure comprises the parking and/or emergency brake.

Claim 38 recites the limitation “the first wear adjusting device” in the last line. There is insufficient antecedent basis for this limitation in the claim. Furthermore, is “the first wear adjusting device” and the “second adjusting device” both in reference to “a wear adjustment device on both sides of the disc”? The Examiner suggests having more consistency throughout the claims.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 29, 35, and 37-38 are rejected under 35 U.S.C. 102(a) as being anticipated by International Patent Document WO 03/082648 (Fuderer).

For the purposes of examination, U.S. Patent No. 7438163 has been used as an English language equivalent to WO 03/082648, and will be referenced in the rest of this Office Action.

Regarding claim 29, Fuderer discloses a method of controlling a pneumatically actuated disc brake (column 2, lines 65 - column 3, line 1), the method comprising the acts of: signaling the use of a parking and/or emergency brake function for the disc

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brake (inherently necessary); and using an electromotive wear adjusting device of the disc brake to implement the parking and/or emergency brake function (column 1, lines 44-58).

Regarding claim 35, the Examiner submits that Fuderer meets the limitations of the claim, as best understood (see 35 U.S.C. 112, 2<sup>nd</sup> paragraph rejections above).

See column 7, lines 2-19.

Regarding claims 37-38, see column 2, lines 4-11.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 30-34 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over International Patent Document WO 03/082648 (Fuderer) in view of U.S. Patent No. 6382741 (McCann).

Fuderer is relied upon as set forth above.

Fuderer does not disclose expressly the use of pressure in a service brake cylinder, obtaining information from gradient sensors/axle load sensors and/or other information present in an electronic braking system of a vehicle, and detecting pressure acting upon spring brakes as recited in claims 30-34 and 36 (as best understood; see 35 U.S.C. 112, 2<sup>nd</sup> paragraph rejections above).

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McCann teaches the use of pressure in a service brake cylinder (see figures), obtaining information from gradient sensors (133)/axle load sensors (135) and/or other information present in an electronic braking system (EBS) of a vehicle, and detecting pressure acting upon spring brakes (12) (as best understood; see 35 U.S.C. 112, 2<sup>nd</sup> paragraph rejections above).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the method as taught by Fuderer to include the teachings of McCann in order to provide a more versatile and robust system/method.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VU Q. NGUYEN whose telephone number is (571) 272-7921. The examiner can normally be reached on Monday through Friday, 11:30 AM to 8:00 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Siconolfi can be reached on (571) 272-7124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/V. Q. N./  
Examiner, Art Unit 3657

/Robert A. Siconolfi/  
Supervisory Patent Examiner, Art  
Unit 3657